

**NEW JERSEY RACING COMMISSION
WEDNESDAY, MARCH 28, 2018
FREEHOLD RACEWAY
RENAISSANCE DINING ROOM
FREEHOLD, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Wednesday, March 28, 2018 in the Renaissance Dining Room located at Freehold Raceway, Freehold, New Jersey.

The following were present:

Pamela J. Clyne, Chairman
Michael J. Arnone, Commissioner
John A. Hoffman, Commissioner
Francis X. Keegan, Jr., Commissioner
Frank Zanzuccki, Executive Director
SDAG George Cohen

Executive Director Frank Zanzuccki read the following statement:

“This meeting today conforms with Chapter 231, P.L. 1975, called the ‘Open Public Meetings Act,’ and as per the requirements of the statute, notification of this meeting has been filed with the Secretary of State and with the following newspapers: Daily Racing Form, Bergen Record, Asbury Park Press, Courier-Post and the Newark Star Ledger.

WHEREAS, in order to protect the personal privacy and to avoid situations wherein the public interest might be disserved, the Open Public Meetings Act permits bodies to exclude the public from that portion of a meeting at which certain matters are discussed.

NOW, THEREFORE, BE IT RESOLVED that consistent with N.J.S.A. 10:4-12(b), the Commission will now adjourn to executive session to obtain legal advice protected from disclosure by the attorney-client privilege on the following matters:

1. Legal advice related to the application of the New Jersey Thoroughbred Horsemen’s Association, pursuant to N.J.S.A. 5:5-189, for approval to utilize up to \$450,000 of thoroughbred purse monies to fund the cost of keeping the barn area open for the month of October 2018;
2. Legal advice related to the application of Darby Development, LLC, pursuant to N.J.A.C. 13:70-1.39 for a temporary waiver of N.J.A.C. 13:70-6.5 on an experimental basis for all races at Monmouth Park’s 2018 meet to allow the uncoupling of horses regardless of common trainer or ownership interests or, in the alternative, to uncouple horses under the same trainer where bona fide separate ownership is present;

3. Legal advice related to the Initial Decision in the matter of Thomas Fanning v. New Jersey Racing Commission, OAL Docket No. RAC 08693-2014S; and
4. Legal advice related to the request of the Thoroughbred Breeders' Association to withdraw their 2016 request and to consider the instant request to utilize surplus funds to provide awards to breeders or owners of registered New Jersey breeds who earn portions of purses in races at out-of-state racetracks pursuant to N.J.S.A. 5:5-66(b)(1)(e) and 66(b)(2)(e).

Discussion of the above matters falls within the exceptions under the law; specifically, matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the Commission's attorney to exercise his ethical duties as a lawyer, and/or matters involving pending or anticipated litigation."

Commissioner Keegan motioned to adopt the resolution to adjourn. Chairman Clyne seconded the motion. All of the Commissioners present voted to affirm. The Commission then adjourned to Executive Session.

Commissioner Hoffman made a motion to adjourn from Executive Session into the Public Session. Commissioner Keegan seconded the motion and the Commissioners voted to affirm. The Executive Session ended.

CONSIDER APPROVAL OF THE PUBLIC AND EXECUTIVE SESSION MINUTES OF THE JANUARY 10, 2018 MEETING

Chairman Clyne made a motion to approve the public and executive minutes of the January 10, 2018 public meeting. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF FREEHOLD RACEWAY TO APPROVE THE CANCELLATION OF RACING ON JANUARY 4, 5, 6, AND MARCH 2, 2018 DUE TO SEVERE WEATHER

Chairman Clyne made a motion to approve the request of Freehold Raceway to cancel racing on January 4, 5, 6 and March 2, 2018 due to severe weather. Commissioner Keegan seconded the motion and all Commissioners voted yes. It was noted that the SBOA would hope that the days can be replaced later in the year, however, Howard Bruno, General Manager of Freehold Raceway stated there is no opportunity to replace the dates.

CONSIDER THE REQUEST OF NEW MEADOWLANDS RACING FOR APPROVAL TO CANCEL RACING ON JANUARY 5, 6, & MARCH 2, 2018 DUE TO SEVERE WEATHER

Commissioner Keegan made a motion to approve the request of the New Meadowlands Racetrack to cancel racing on January 4, 5, 6 and March 2, 2018 due to severe weather. Chairman Clyne seconded the motion and all Commissioners voted yes. Peter Koch, Race

Secretary for the New Meadowlands Racetrack indicated that it does not seem likely that the dates will be replaced. The SBOA indicated that they would hope to see these dates replaced.

CONSIDER THE REQUEST OF DARBY DEVELOPMENT, LLC ON BEHALF OF THE THOROUGHBRED HORSEMEN'S ASSOCIATION FOR APPROVAL OF DEPARTMENT HEADS, RACING OFFICIALS, RACE FORMAT, DAILY WAGERING FORMAT, POST TIME, ETC. FOR MONMOUTH PARK'S 2018 RACE MEETING

Commissioner Keegan motioned to approve the race format for Monmouth Park's 2018 meeting, however, the request to conduct sports wagering was denied and the request to uncouple owners and trainers was deferred as the item was considered separately on the agenda. Commissioner Hoffman seconded the motion and all Commissioners voted yes. Michael Vukceвич, representing Darby, updated the post-time as follows: Saturdays and Sundays – 12:50 p.m., Thursdays and Fridays – 1:15 p.m. and Derby Day – 1:45 p.m.

CONSIDER THE REQUEST OF THE THOROUGHBRED BREEDERS' ASSOCIATION TO WITHDRAW ITS 2015 REQUEST AND TO CONSIDER THE INSTANT REQUEST TO UTILIZE SURPLUS FUNDS TO PROVIDE AWARDS TO BREEDERS OR OWNERS OF REGISTERED NEW JERSEY BREDS WHO EARN PORTIONS OF PURSES IN RACES AT OUT-OF-STATE RACETRACKS PURSUANT TO N.J.S.A. 5:5-66(B)(1)(E) AND 66(B)(2)(E)

Executive Director Zanzuccki stated that the TBA advised that they will be submitting an alternative request. Commissioner Hoffman motioned that the item be removed from the agenda. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, PURSUANT TO N.J.S.A. 5:5-189, FOR APPROVAL TO UTILIZE UP TO \$450,000 OF THOROUGHBRED PURSE MONIES TO FUND THE COST OF KEEPING THE BARN AREA OPEN FOR THE MONTH OF OCTOBER 2018

Commissioner Hoffman raised several concerns regarding the request. First, he stated that there is no explanation or breakdown of the use of purse money in the amount of \$450,000. Second, he pointed out that the request, as he understands it, is to use purse money to keep the backstretch area open in October to allow trainers to race in other jurisdictions. He questioned how this is beneficial to New Jersey racing and whether this meets the standards contained in the statute as directly advancing, preserving and enhancing the overall economic well-being of the thoroughbred racing industry. Finally, Commissioner Hoffman indicated that thoroughbred purses have already been diminished as a result of the use of purse money to fund the thoroughbred portion of the workers' compensation program which he understands is necessary. However, he stated that he does not understand why additional purse money is being taken away which will further reduce the purses. Commissioner Hoffman indicated that diverting purse money for other purposes should be a strong exception and he noted that he is not in favor of this request.

Michael Vukcevich, Director of Regulatory Affairs for Darby Development, stated that Darby recognizes the importance of keeping the backstretch area open once the Monmouth Park meet has concluded in that it is a magnet for horsemen to come to New Jersey knowing they will not have to find stabling once the Monmouth Park meet has concluded. John Heims, Race Secretary for Monmouth Park indicated that it is imperative horsemen are provided with stabling once they ship to New Jersey, and the benefit of stabling far outweighs the cost to maintain the barn area open. He stated that the availability of the backside area is an incentive to other horsemen to race at Monmouth Park and this ensures that the racetrack will have enough horses to fill the race card. The Commissioners asked Darby Development if there is a breakdown of the \$450,000 expense and Michael Musto, Executive Director of the NJTHA explained that the breakdown includes the cost for insurance, liability expense and maintenance of the barn area. He estimated the cost to be \$15,000 a day to keep the stable area open.

The Commissioners asked Darby Development why the request is to utilize purse money instead of it being considered an operational expense of the racetrack. John Heims explained that the horsemen benefit from the open stable area so the expense should be funded from the thoroughbred purses.

Commissioner Hoffman made a motion to deny the request of the NJTHA to utilize up to \$450,000 of thoroughbred purse monies to fund the cost of keeping the Monmouth Park barn area open during the month of October 2018. Chairman Clyne seconded the motion. Chairman Commissioner Hoffman and Chairman Clyne voted yes. Commissioner Arnone and Commissioner Keegan voted no. The motion to deny did not carry.

Commissioner Arnone made a motion to approve the request of the NJTHA. Commissioner Keegan seconded the motion. Commissioners Arnone and Keegan voted yes. Chairman Clyne and Commissioner Hoffman voted no. The motion to approve did not pass. As a result, the request of the NJTHA was neither approved nor denied.

CONSIDER THE APPLICATION OF DARBY DEVELOPMENT, LLC, PURSUANT TO N.J.A.C. 13:70-1.39 FOR A TEMPORARY WAIVER OF N.J.A.C. 13:70-6.5 ON AN EXPERIMENTAL BASIS FOR ALL RACES AT MONMOUTH PARK'S 2018 MEET TO ALLOW THE UNCOUPLING OF HORSES REGARDLESS OF COMMON TRAINER OR OWNERSHIP INTERESTS OR, IN THE ALTERNATIVE, TO UNCOUPLE HORSES UNDER THE SAME TRAINER WHERE BONA FIDE SEPARATE OWNERSHIP IS PRESENT

Executive Director Zanzuccki stated that the purpose of the coupling rule is to protect the integrity of the race. He indicated that Darby Development has submitted a number of documents in support of their request, but noted that, in his view, Darby has not addressed the integrity concern or indicated that the integrity concern that was present when the rule was initially promulgated still does not exist today. As a result, the Executive Director stated he would not approve the total waiver as requested by Darby Development. Commissioner Hoffman added that the request does not contain information on how many additional horses will be added and how many horses have been coupled in the past.

Michael Vukceovich, on behalf of Darby Development, respectfully disagreed with the statement of Executive Director Zanzuccki as concerns the integrity issue and asserted that the information he obtained from other racing jurisdictions that uncouple same owner and trainer entries from their stewards indicates no evidence to show that the rule has resulted in a decrease in integrity as there have not been many violations over the years in this regard.

John Heims, Monmouth Park Race Secretary, indicated that the coupling situation is somewhat antiquated in terms of increasing field size and gaining more betting interests. He stated that it has been proven that patrons want full fields and uncoupling is an extra tool to increase handle. He pointed out that if uncoupling is allowed in certain races and not others and he does not see where the integrity is compromised. He asserted that other states have allowed this across the board with no integrity issues.

The Executive Director indicated that the consensus is the higher value of the race the less likely there will be an integrity issue. He pointed out that when New Jersey hosted the Breeders' Cup in 2007, one of the conditions required that all horses entered regardless of common ownership or trainership be uncoupled.

The Executive Director stated that in order to approve the waiver request, the applicant must meet the requirements set forth in N.J.A.C. 13:70-1.39: 1) such a waiver will benefit the horse racing industry; 2) such a waiver is consistent with the intent of, if not the letter of, the rules or 3) where strict application of the rule would create an unnecessary hardship that is contrary to the legislative intent of the underlying statutes, the public interest or the integrity of the sport.

Michael Vukceovich asked if the Commission is not inclined to approve the request for the entire meet, Darby requests that approval be granted on an experimental basis for a portion of the meet and allow the results to be reported to the Commission.

The Commission asked Darby to provide data regarding the coupling that took place in the 2016 and 2017 Monmouth Park meets.

Commissioner Arnone made a motion to approve the waiver to allow the uncoupling of horses regardless of common trainer or ownership. Commissioner Keegan seconded the motion. Commissioners Arnone and Keegan voted yes. Chairman Clyne and Commissioner Hoffman voted no. The motion did not pass.

Chairman Clyne made a motion to approve the alternative request to uncouple horses under the same trainer where bona fide separate ownership is present on an experimental basis for the entire Monmouth Park meet. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE 2018-2019 BUDGET OF THE NEW JERSEY JOCKEY'S HEALTH AND WELFARE TRUST

Chairman Clyne made a motion to approve the 2018-2019 budget of \$178,873.08 of the New Jersey Jockey's Health Welfare Trust. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE 2018 BUDGET OF THE THOROUGHBRED BREEDERS' ASSOCIATION OF NEW JERSEY

Commissioner Hoffman made a motion to table the budget due to necessary modifications by the New Jersey Thoroughbred Breeders' Association. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE ADOPTION OF AMENDMENTS TO N.J.A.C. 13:70-14A.17 AND N.J.A.C. 13:71-23.16, ANABOLIC STEROIDS

The Commission received one comment which does not warrant amending the rule. Commissioner Hoffman made a motion to approve the adoption of amendments to the anabolic steroid rule. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE ADOPTION OF NEW RULES N.J.A.C. 13:70-14A.18 AND N.J.A.C. 13:71-23.17 (SHOCK WAVE THERAPY); N.J.A.C. 13:70-14A.18A (PENALTIES FOR VIOLATING N.J.A.C. 13:70-14A.18); N.J.A.C. 13:71-23.17A (PENALTIES FOR VIOLATING N.J.A.C. 13:71-23.17); AND THE ADOPTION OF AMENDMENTS TO N.J.A.C. 13:70-2.1 (DEFINITIONS)

The Commission received comments from two individuals which do not warrant amending the rule. Chairman Clyne made a motion to approve the adoption of new rules related to shock wave therapy. Commissioner Arnone seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN THOMAS FANNING V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 08693-2014S

The Executive Director stated that this matter arose when a sample taken from the horse "Jump the Shark" which was trained by Thomas Fanning, tested positive for Dextrorphan following the 3rd race on April 12, 2014 here at Freehold Raceway. A split sample was requested which confirmed the presence of this drug. The Board of Judges conducted a hearing and found Thomas Fanning in violation of several of the Commission's medication rules and imposed a 15-day suspension, \$500 disqualified the horse and redistributed the purse. Thomas Fanning requested a stay and appeal and the matter was transmitted to the Office of Administrative Law for a hearing. The ALJ issued an Initial Decision on December 22, 2017 and concluded that Fanning violated the various Commission rules that the Board of Judges found him to be in violation of concerning the drug positive. The Executive Director indicated that the ALJ, however, removed the 15-day suspension, upheld the redistribution of the purse,

disqualification and \$500 fine against Fanning. The Executive Director indicated that staff recommends that the Commission modify this penalty imposed by the ALJ.

Chairman Clyne made the following motion:

“The Commission has reviewed the Initial Decision, the record from the OAL hearing and the exceptions. I move that the Commission order the Executive Director to execute the draft Final Decision on the Commission’s behalf and issue a ruling that suspends petitioner’s license for 15 days, imposes a \$500 fine, disqualifies the horse, and orders the redistribution of the purse. The basis for this decision is explained and documented in the Commission’s Final Decision.” Commissioner Hoffman seconded the motion and all Commissioners voted yes.

AGENDA ITEMS FOR DISCUSSION AND INFORMATION

Executive Director Zanzuccki acknowledged the Commission’s receipt of the following audited financial statements:

- New Jersey Jockey’s Health and Welfare Trust Audited Financial Statements for the 2016 calendar year;
- Standardbred Breeders’ and Owner’s Association’s Audited Financial Statements for the 2017 calendar year;
- Thoroughbred Breeders’ Association of New Jersey’s audited financial statements for the 2017 calendar year; and
- Darby Development LLC and Affiliate’s Consolidated Financial Statements and Independent Auditor’s Report as of December 31, 2016

There being no further discussion or comments from the public, Commissioner Arnone moved that the meeting be adjourned. Commissioner Keegan seconded the motion and it was approved unanimously.

ATTEST:



Frank Zanzuccki, Executive Director